

**APR 24 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

DIANA BEARD-WILLIAMS,

Plaintiff - Appellant,

v.

PALMDALE SCHOOL DISTRICT (PSD);  
PALMDALE EDUCATION FOUNDATION  
(PEF); NANCY SMITH, individually and  
official capacity; KATHLEEN DUREN,  
individually and official capacity; VELMA  
TROSIN, individual and official capacity,

Defendants - Appellees.

No. 01-57163

D.C. No. CV-99-06789-AHM

MEMORANDUM\*

DIANA BEARD-WILLIAMS,

Plaintiff - Appellee,

v.

PALMDALE SCHOOL DISTRICT (PSD),

Defendant - Appellant.

No. 02-55251

D.C. No. CV-99-06789-AHM

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court  
for the Central District of California  
A. Howard Matz, District Judge, Presiding

Submitted April 10, 2003\*\*  
Pasadena, California

Before: BEEZER, FERNANDEZ, and PAEZ, Circuit Judges.

Diana Beard-Williams appeals pro se the district court's Rule 41(b) dismissal of her employment discrimination action for failure to prosecute . The Palmdale School District ("the District") appeals the district court's denial of attorney's fees under 42 U.S.C. § 2000e-5(k). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review the district court's dismissal for failure to prosecute for abuse of discretion. *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996). The district court's dismissal of this action based on a determination that Beard-Williams willfully failed to appear for the sixth day of her jury trial, without a valid excuse, was not an abuse of discretion. *See id.* at 1385 ("Failure to appear for trial, without excuse, prejudices an adversary and interferes with the court's docket about as much as any procedural default can."). Although Beard-Williams sent a

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\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

doctor's note on the third day of her absence, the court was not required to credit this letter, which was not written under penalty of perjury. Because dismissal was proper, we do not review Beard-Williams's other claims of error. *See id.* at 1386.

We review the district court's denial of attorney's fees for abuse of discretion. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 619 (9th Cir. 1987). The district court's determination that Beard-Williams's action was not frivolous was supported by the record. *See Jensen v. Stangel*, 762 F.2d 815, 818 (9th Cir. 1985) (per curiam) (holding that the district court's denial of defendants' motions to dismiss and for summary judgment suggested that plaintiff's claims were not without merit). Having determined that Beard-Williams's action was not frivolous, the district court properly denied the District's motion for an award of attorney's fees.

**AFFIRMED.**